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COMMITTEE ON THE ELIMINATION OF
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ADOPTION OF THE REPORT OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN ON ITS THIRTEENTH SESSION

Draft report

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Addendum

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 18 OF THE CONVENTION

Guatemala

1. The Committee considered the combined initial and second periodic report of Guatemala (CEDAW/C/GUA/1-2 and Corr.1 and Amend.1) at its 242nd and 246th meetings, on 24 and 26 January 1994 (CEDAW/C/SR.242 and 246).

2. In introducing the report, the representative of the Government said that unfortunately, owing to financial constraints, the persons most qualified to present the report could not come to address the meeting, but that all their comments and recommendations would be analysed and taken into consideration for the elaboration of future policies and in the preparation of the subsequent report. Gender-based studies had been undertaken and certain aspects had undergone changes owing to the successive changes in administration and government policy. She gave updated information concerning the Government and demographic data. On 5 June 1993, the state of law had been restored and with the nomination of the new President, democracy had been reinstated. According to the most recent projections, 49.5 per cent of the population was women, of which 62 per cent lived in rural areas. She assured the members that the new President placed special emphasis on the protection of human rights.

1. General observations

3. Members welcomed the ratification of the Convention without reservations and the well-structured, extensive and frank report that had followed the Committee's guidelines and reflected the Government's effort to integrate women into the life of the nation. It was noted that all sectors of society were represented in the preparation of the report. However, it was felt that the report could have been more analytical and that it lacked information on the de facto situation and on policies carried out to enact related laws. It was suggested that the report did not clearly indicate whether progress had been made since the ratification of the Convention or whether the advancement of women, had encountered many obstacles. The report was said to lack information on national programmes to implement the policy of non-discrimination.

4. Regret was expressed that no one from the body which had prepared the report could attend the meeting. While the report stated that women were not discriminated against in the country, it was noted that the country was divided in terms of class and race and that there was discrimination against indigenous women. Experts asked whether the National Office of Women's Affairs was undertaking any measures to counteract that phenomenon. Members also drew attention to the fact that there was no reference to the shortcomings in the Civil Code, which contained provisions that were discriminatory to women, although they had been objected to by non-governmental organizations (NGOs).

5. In replying to those observations the representative of the Government emphasized the priority attached to women's issues in the country and said that, owing to the current austerity plan, it was difficult to send government representatives from the country to international meetings. The socio-economic and political context in which the Convention was implemented had to be taken into account in order to determine whether national laws and their application were appropriate and whether or not they should be considered discriminatory to women. She said that an appeal had been made to the Constitutional Court regarding the unconstitutionality of certain provisions contained in the Civil Code. She read out the judgement that had been consequently handed down, in which the Constitutional Court said that the Constitution protected the person and the family, guaranteed freedom, the development of the human being, liberty, equal rights and equal opportunities and responsibilities for women and men and stipulated the protection of motherhood. Upon ratification, an international treaty such as the Convention automatically became part of the Constitution and made it mandatory for the State to adopt only legal measures that were not discriminatory towards either sex. According to that ruling, none of the legal provisions contained in the Civil Code were unconstitutional, and therefore contrary to the principle of non-discrimination.

6. Members pointed out that no explanation was given in the report about any family-planning policy or about steps taken to upgrade the health of women and children. It was also not clear from the report whether the machinery to implement policies to promote the status of women had been upgraded.

7. Members noted the significant responsibilities of women in Guatemala, including those for health, hygiene and family nutrition, but that women were not given the same importance as men in outside work and in politics.

8. It was observed that political violence conditioned people to tolerate violence in general, which had an effect on attitudes towards violence against women. Political violence had to stop so that women could once again enjoy harmony and find their rightful place in society. The representative explained that the Government was currently trying to consolidate peace in order to ensure that women could enjoy well-balanced development free from violence.

9. Members expressed alarm at the ruling of the Constitutional Court, especially in a country where the content of an international treaty became part of domestic law, once the treaty had been ratified. They said that if the country wished to implement the Convention, it ought to amend some of its laws, particularly the provisions regarding family law and gender stereotypes. The presentation of the report showed that the Government did not attach much importance to women's issues and the replies given in the report only increased the Committee's concerns about the discriminatory nature of the Civil Code. There was incompatibility between the obligations undertaken by ratifying the Convention and the actual legal situation as well as its interpretation by the Constitutional Court. Members noted that this position was completely unacceptable and suggested that the Government should seek assistance from the United Nations in correcting its legislation and in preparing its subsequent report. Members requested that the Government be asked to present a special report to inform the Committee about efforts made to redress the impact of the discriminatory laws.

2. Questions related to specific articles

Article 5

10. With reference to the traditional role of women in society, members expressed the need for the Government to extend more educational efforts to women. They asked which measures the Government or NGOs had undertaken to promote the implementation of article 5 not only in respect of changing the laws, but also in respect of doing away with socio-cultural stereotypes vis-à-vis women. The representative said that, in the opinion of some elements of society, the role of women was considered to be inferior to that of men, whereas in reality such was not the case. Education programmes were currently under way to teach men to acknowledge the participation of women in society and to share the responsibility for educating the children.

11. Members also asked whether any specific measures had been carried out in rural areas. When members requested more detailed information on the issue of violence, the representative said that education campaigns were currently being carried out to eradicate violence against women and that the subsequent report would contain information on the results of those campaigns and statistical data.

Article 6

12. Considering that Guatemalan society appeared to view prostitution with indifference and tended to blame prostitution on the women themselves without taking into consideration the social and economic environment, such an attitude

entailed the risk of exploitation by men. Society should consider the reasons why women were in that situation. Members requested statistical data related to prostitution, including information on the age bracket and the social strata of the women involved, and asked whether health, education and rehabilitation services had been set up for those women.

13. The representative was convinced that these evils were caused by lack of adequate education and said that the aim of the Government was to find training and new working opportunities for those women. NGOs had elaborated specific training programmes.

Article 7

14. Satisfaction was expressed that illiterate women were no longer discriminated against in their voting rights. Members requested statistical data on the number of women who participated in elections and on the political inclinations of women and asked whether women in rural areas were restricted in exercising their voting rights.

Article 10

15. Members asked what measures had been undertaken to revise school books or train educators with a view to eliminating discriminatory concepts and what had been done to reduce female illiteracy. The representative said that the concept of complementarity and gender equality would be promoted through education and that the subsequent report would contain detailed information on the measures undertaken in that respect.

16. Experts inquired whether the gender-specific schools that had been mentioned in the report still existed both in urban and in rural areas and whether economic factors had not led to a coeducational school system. The representative explained that parents had the right to choose the form of education that they preferred for their children. There was no discrimination involved.

17. Bearing in mind the cultural diversity of the country, with some 23 different languages spoken, members asked whether the educational programmes took those cultures into account.

18. Further data were requested on the gender distribution in the various fields of study.

Article 11

19. As the country had ratified Convention 100 of the International Labour Organization (ILO), members would welcome the fact that its provisions were also implemented and requested more information on the matter.

20. Unlike women working in the formal sector, who were covered by the social security system, the majority of women worked in the informal sector and in domestic service and lacked social security coverage. It was suggested that relevant policies should be modelled on those of other countries where women

working in the informal sector were incorporated into the social security system. Regarding the law governing the supply of child-care services for enterprises with more than 30 workers, it was said that the number should not be limited to female workers in order to prevent employers from not hiring women so as not to have to comply with the obligations.

21. Members required further clarification on the reasons for the wage discrimination against women and asked whether women were mobilizing themselves in order to defend their rights under the Convention. Members also asked whether the differences in wages between women and men were equally large in the formal and the informal sectors, whether women working in the informal sector were entitled to maternity leave and pensions and could join trade unions and what programmes had been undertaken to improve the situation of women in the informal sector.

22. According to the report, fines for firing a woman for becoming pregnant were so low that employers simply paid the fine and fired the woman. It was hoped that future reports would address the situation. Members asked whether women's work in the informal sector was reflected in national economic statistics and what the working conditions of women in the garment industries were.

23. The representative said that women could organize themselves freely. The fact that there were not many groups was a result of cultural factors and showed the satisfaction that women felt with their society.

Article 12

24. Members inquired about the Government's family-planning policy and asked whether the programmes were only geared towards rural women or whether they were also directed towards women in urban areas and indigenous women.

25. The representative said that the family planning policy was given wide publicity and was open to anybody. Every small community had family planning services. Indigenous communities had equal access, but they considered the practices harmful to their traditions and habits. They also tended to object to using contraceptives because they thought that their use was a birth control method specifically targeted at them to exterminate their culture and people. The representative explained that family planning had negative effects on the population. Women had been strongly discriminated against in that all of the preventive methods had been directed only against them. Indigenous women were not given information about the effects of contraceptives on their bodies and sometimes the donation of food was linked to the use of contraceptives. Birth control lead to the breakdown of the society and the family. It also had a negative effect on youth and increased the number of single-female-headed households.

26. The representative stated that her country was composed of many ethnic groups and was characterized by a sense of solidarity, family support and understanding and that, consequently, it would be desirable if economic support for population control were directed towards education programmes, which would

improve the living standards and lead to a more balanced growth of the population.

27. As abortion was a punishable offence, members asked what the sentences were.

Article 14

28. Members expressed concern at the unequal distribution of land in rural areas and inquired about the existence of any indentured conditions under which women worked, whether rural women had access to child and health care and whether they could own land and have access to credit.

29. Members commented that in Guatemala sexist notions, such as the "natural" role of women in the context of procreation, were still being reinforced. If such sexist attitudes prevailed, they would have adverse effects on the future of girls who would choose only traditional feminine careers. Members inquired about consciousness-raising campaigns that should enhance the social and economic role of women rather than their role in the family. The representative stated that the notions of the role of women in the family should not be changed. A misunderstanding of equality would not benefit any society. It was more important to encourage the idea of the complementarity of men and women.

Article 16

30. Commenting on the minimum age for marriage, which was 14 for girls and 16 for boys, experts said that such a provision encouraged child marriages and should be abolished with a view to setting the same legal age for both partners. In her reply, the representative quoted the judgement made by the Constitutional Court according to which civil rights were acquired with the attainment of majority. Entrance into marriage required that the couple had reached majority. The different age requirements for boys and girls were based on physiological and biological factors and on the interests of society. Consequently, the difference in minimum age was not considered to be unconstitutional.

31. Regarding the concern expressed by members about the family law, which was discriminatory to women as it contained a rigid description of the roles of women and men, thus reinforcing existing stereotypes, the representative stated that the legislature sought to protect the family, as it was the foundation of the State.

32. Members expressed the opinion that the legal provision according to which the husband remained the head of the family and a woman needed the husband's permission to take up outside activities was contrary to the provisions of the Convention and extended the patriarchal system. It was a source of basic discrimination against women and, although the Constitution provided for the right to work, the "husband's law" seemed to be superior to the basic law. Likewise, the family law spoke only of the obligation of women to look after the children and take care of the household, without also mentioning the husbands.

33. In reply the representative referred to the ruling of the Constitutional Court which said that men and women had equal family responsibilities in

protecting the children. The law that gave the husband the right to represent his spouse in no way harmed the wife, especially as the role of head of the family could be assumed by the wife if the husband was unable to do so either because he had abandoned the household or if he had been sentenced to imprisonment. The administration of property was carried out by common agreement between the spouses. The representative said that the provisions according to which the husband had to provide assistance to the wife and the wife had the right and duty to care for minor children were in no way discriminatory; they were only meant to protect the wife. Neither of the two spouses could avoid their responsibilities towards their children. Women were not prohibited from taking on outside activities as long as such jobs did not prevent them from taking care of their minor children and the household and were not contrary to the purpose of marriage and the obligations inherent in maternity.

34. When members asked whether women had taken court action to claim their rights, whether any amendment of the law was planned and what the reaction of women's groups to that law was, the representative said that no claims had ever been entered to oppose the husbands as the representative of the family.

35. The representative said that it was necessary for women to educate their sons to respect gender equality and that the responsibility for educating the children was shared.

36. In reply to the comment by the members that the criminal code was equally discriminatory as it penalized women more heavily than men for committing adultery, the representative said that the Government was currently trying to amend the discriminatory provisions of the code.